

No. 15531

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

G. ABRAMSON and HOWARD MILLER,

Appellants,

vs.

GEORGE GARDNER, Trustee in Bankruptcy of the Estate
of Feldman-Seljé Corporation, Bankrupt,

Appellee.

APPELLANTS' OPENING BRIEF.

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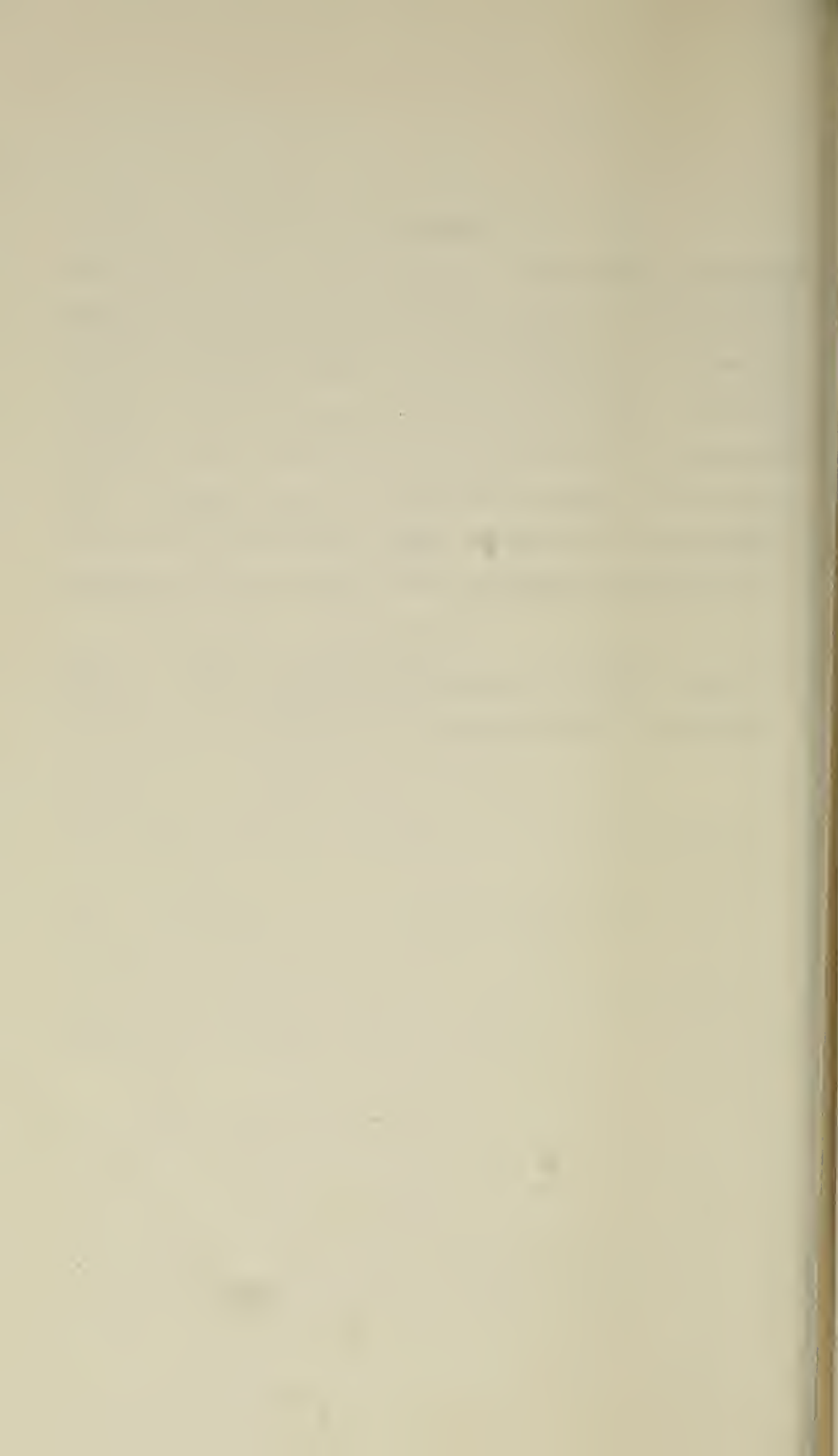
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Appellee.

APPELLANTS' OPENING BRIEF.

Basis of Jurisdiction.

This was an original proceeding begun in the District Court by the filing of a Petition in Involuntary Bankruptcy on October 1, 1956 [Tr. pp. 3-6]. Thereupon an Order of General Reference was made to Referee Howard V. Calverly [Tr. pp. 6-7]. Referee Calverly made and entered an adjudication of Bankruptcy [Tr. p. 7].

Thereupon the Referee appointed a Receiver, to wit, the Appellee, George Gardner [Tr. pp. 8-9]. The Receiver in turn filed his Petition for an Order to Show Cause *re* Setting Aside of Sale, and the Referee in Bankruptcy issued an Order to Show Cause based upon this petition [Tr. pp. 9-15].

Statement of the Case.

The facts in this matter are undisputed and may be summarized chronologically as follows:

On August 24, 1956, an action at law was filed in the Superior Court of Los Angeles County by the appellant Abramson against the Feldman-Seljé Corporation. On the same day a Writ of Attachment was issued by the Clerk of that Court and certain personal property consisting of unfinished desks belonging to the corporation was attached by the Marshal of Los Angeles County.

On September 2, 1956, a judgment of approximately \$4,000.00 was secured by the appellant Abramson against the Corporation in the Superior Court action referred to.

On September 12, 1956, a Writ of Execution was duly issued by the Clerk of the Superior Court and pursuant to the instructions of the appellant Abramson a Marshal of Los Angeles County conducted a sale of the personal property previously attached for the satisfaction of the judgment secured by the appellant Abramson. The sale was legally conducted in the presence of other bidders and the property was sold to the appellant Abramson for the sum of \$500.00 which was the highest and best bid.

There is no question concerning the validity of the sale or the proceedings in the Superior Court which preceded it. This appeal is not concerned with the proceedings in the State Court.

Thereupon the appellant Abramson resold the property to the appellant Miller for the sum of \$500.00 in cash

for which he issued to the appellant Miller a Bill of Sale which was recorded in Los Angeles County and which was introduced in evidence and is part of the record of this appeal.

Thereafter on October 1, 1956, three creditors of the corporation filed their Petition in Involuntary Bankruptcy. On October 10, 1956, the Referee in Bankruptcy adjudicated the corporation a bankrupt and on October 12, 1956, George Gardner was appointed Receiver of the bankrupt concern. The Receiver promptly took possession of the premises of the bankrupt and found that the personal property of unfinished desks and other inventory was still located upon the premises of the bankrupt.

Thereupon the Receiver filed his Petition for an Order to Set Aside the Sale as to both appellants Abramson and Miller under the provisions of Section 67 of the Bankruptcy Act. The appellants-respondents filed a Motion to Dismiss the Petition, which was denied by the Referee. A hearing was held on the allegations contained in the Receiver's petition and the Referee made his Findings of Fact, Conclusions of Law and Order in which the Execution Sale to Abramson was invalidated and set aside. The subsequent resale to Miller was also invalidated. The Court also ruled that the \$500.00 paid to Abramson by Miller should be refunded to the appellant, Miller. A Petition to Review the Referee's Order was immediately filed which was affirmed by the District Judge.

In the interim the Receiver sold the personal property at public auction and the Receiver now holds the pro-

ceeds from the sale pending the disposition of this appeal as to their ownership.

The appellant Abramson has at all times offered to return the sum of \$500.00 to the bankrupt estate or to whomever directed by the court.

The questions involved in this appeal are as follows:

1. Did the appellant Abramson acquire valid title and right to the possession of the personalty at the Execution Sale referred to? (It is conceded that the appellant Miller stands in the same position as the appellant Abramson insofar as title and the right to possession are concerned.)

2. Having secured title at an Execution Sale can the appellants' title be invalidated by a subsequently appointed Receiver or Trustee in Bankruptcy under Section 67 of the Bankruptcy Act where the Petition in Bankruptcy was filed several weeks *after* such sale occurred?

3. Isn't the subsequently-appointed Trustee in Bankruptcy limited to the recovery of a preference under Section 60 of the Bankruptcy Act?

4. Conceding that the purchaser at the Execution Sale is also the judgment creditor, should such judgment creditor occupy a different status than any other bidder or purchaser?

5. Are the appellants entitled to the fund in possession of appellee or is the bankrupt estate the owner?

Specification of Errors.

1. The Referee in Bankruptcy should have granted the appellants' Motion to Dismiss the Petition of the Receiver [Tr. p. 25].

2. The Referee should have made his Findings of Fact, Conclusions of Law in accordance with the evidence introduced at the hearing and entered judgment accordingly in favor of the appellants-respondents. The Findings of Fact and Conclusions of Law in this matter are not numbered; however, they are found on pages 20 through 26 of the Transcript of Record and the errors in said Findings and Conclusions of which these appellants complain are as follows:

A. That an attachment lien *only* existed in favor of the appellants at the time of the filing of the Petition in Bankruptcy [Tr. p. 22].

B. That the Receiver took possession of the personal property and was in possession and had the right to the possession of the personal property [Tr. pp. 22, 23 and 24].

C. That the appellants-respondents Abramson and Miller are not and were not bona fide purchasers at the judicial sale [Tr. pp. 23-24].

D. That neither of the appellants-respondents had title to the personal property [Tr. pp. 23-24].

E. That the personal property referred to belonged to the bankrupt estate free and clear of any lien or claim of the appellants-respondents.

3. The District Judge erred when he affirmed the Findings of Fact, Conclusions of Law and the Order of the Referee in Bankruptcy [Tr. p. 29].

POINT ONE.

A Purchaser at Execution Sale Gets Valid Title and the Right to Possession.

It is conceded that the proceedings under which Abramson secured title at the Execution Sale were valid and legal. It is also conceded that these proceedings occurred several weeks prior to the time that the Involuntary Petition in Bankruptcy was filed.

There is no general substantive body of law pertaining to property or property rights independent of the law of the state which confers these property rights. The rule is that the Bankruptcy Court follows all state court rulings with respect to the determination of property rights. This has been decided in this circuit in the case of *Laugharn v. The Bank of America N. T. & S. A.* (C. C. A. 9, 1937), 88 F. 2d 551, 33 A. B. R. (N. S.) 656:

“If previous decisions of this court, in the absence of state court decisions, established a rule of property, which was later changed by state statute, can it be argued that this court must follow its previous decisions? If the law of the state is established either by statute or judicial decisions, this court must follow the law of property as determined by the highest state court. Therefore, we must and do overrule the prior decisions of this court in so far as they are inconsistent with the settled law of California as adjudged by the California courts.”

At an execution sale of personal property the purchaser thereof gets valid title from the officer making the sale.

Section 699 of the Code of Civil Procedure provides:

“Personal property not capable of manual delivery, how sold and delivered. When the purchaser of any

personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied."

The rules of law established by the California Courts as to the passage of title and the right to possession are contained in the case of *Holm v. Overholt* (1932), 214 Cal. 431, 6 P. 2d 76. In this case the Court said:

"Where an attachment is levied on personal property capable of manual delivery, it is the duty of the sheriff to attach and safely keep sufficient of such personal property as will satisfy the plaintiff's demand against the defendant unless a satisfactory redelivery bond or cash be deposited with him (Secs. 540, 542, Code Civ. Proc.) or the attachment is otherwise released. It is his duty to maintain the possession of the property for the benefit of the attaching plaintiff and he may not dispose of it except at his peril and only in accordance with law. (*Callahan v. Danziger*, 172 Cal. 738 [158 Pac. 760]; *Aigeltinger v. Whelan*, 133 Cal. 110 [65 Pac. 125]; *Wood v. Lowden*, 117 Cal. 232 [49 Pac. 132]; 6 C. J. p. 370, Sec. 819.) Upon the Execution Sale of personal property capable of manual delivery the purchaser is entitled to possession upon payment of the purchase price and to a certificate of sale transferring to him all of the debtor's interest in the property as of the date of the levy of the execution. (Sec. 698, CCP; 11 Cal. Jur. pp. 83, 139.)"

It is significant to a determination of the issues in this case to understand at this point the rule in California as to judgments and liens of judgments preceded by at-

tachments. Under California law an attachment on personal property creates a lien. The lien is satisfied and extinguished when there is an execution sale. This is of primary significance in the determination of this case because the entire case of the Trustee in Bankruptcy is based upon the erroneous assumption that at the time of the filing of the bankruptcy petition in October the appellants had only a lien upon the property. It is the position of the appellants that the lien had been extinguished by the execution sale and the appellants had title and the right to possession.

In California, a sale at execution extinguishes the lien and converts the purchaser's rights into the right to title and the right to possession. In the case of *Bateman v. Kellogg* (1922), 59 Cal. App. 464, 211 Pac. 46, the court set forth at page 473:

"By the sheriff's sale to appellant on May 3, 1915, his judgment against L. A. Walker was satisfied, and his judgment lien thereupon ceased to exist. When property is sold under execution for the full amount of the judgment, the lien created by the levy is thereby extinguished."

The California courts themselves have recognized the importance that must attach to the finality of judicial sales. In the case of *Pepin v. Strickland* (1931), 114 Cal. App. 32, 299 Pac. 577, the court said:

"The judgment creditor purchasing at an execution sale in reliance upon the appearance of title in the judgment debtor is a bona fide purchaser and not bound by any secret interest of which he is not put upon notice, actual or constructive."

The same rule was followed in California in the case of *Pacific Fruit Exchange v. Schropfer* (1929), 99 Cal. App. 692, 279 Pac. 170.

The foregoing authorities, it is believed, conclusively establish the rights of a purchaser at execution sale as well as the fact that the Bankruptcy Court in the administration of its estates is bound by these rulings in a determination of a question of property rights in its forum.

POINT TWO.

The Execution Sale Having Been Completed Several Weeks Prior to Bankruptcy, There Was No Lien for the Bankruptcy Court to Set Aside Under Section 67 of the Bankruptcy Act but Only the Right to Recover a Preference Pursuant to Section 60 of the Bankruptcy Act.

It is not denied that the Involuntary Bankruptcy Petition was filed on the first day of October, 1956 or approximately two weeks *after* the sale at execution to the appellants had taken place. After the appointment of George Gardner as Receiver, he instituted a proceeding by Petition for an Order to Show Cause *Re* Setting Aside of Sale [Tr. pp. 9-15]. The petition (which is not numbered) provides *inter alia* as follows:

“ . . . that if allowed to stand, the said execution sale would be preferential so far as the said G. ABRAMSON is concerned; that the lien obtained by the attachment and execution was a lien obtained by legal proceedings, within four months of bankruptcy, upon property of the bankrupt, and at a time when the bankrupt was insolvent, and would have been void as against the Trustee in Bankruptcy to be appointed herein, had not the purported sale taken place.”

The difficulty with the position of Trustee in Bankruptcy throughout these proceedings is that he has mistaken his remedies. The Trustee has continually insisted that his remedy lies under Section 67 of the Bankruptcy Act (11 U. S. C. A. 107) rather than under Section 60 of the Bankruptcy Act (11 U. S. C. A. 96). Section 67a(1) of the Bankruptcy Act provides as follows:

“LIENS AND FRAUDULENT TRANSFERS. a. (1) Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition initiating a proceeding under this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this Act: Provided, however, That if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.”

On the other hand Section 60 of the Bankruptcy Act, which is devoted to preferences rather than the elimination of certain judicial liens provides as follows:

“60. PREFERRED CREDITORS. a. (1) A preference is a transfer, as defined in this Act, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition initiating a proceeding under this Act, the effect of which transfer will be to enable such creditor to obtain a great percentage of his debt than some other creditor of the same class.”

From a reading of the cases under both sections, it is apparent that Section 67 is designed to eliminate certain liens acquired by judicial proceedings, as an attachment, while Section 60 is designed to recover for the Bankrupt estate payments made to creditors in certain situations and under certain circumstances which can be regarded as preferential.

Irrespective of what theory the Trustee is proceeding upon, it is the contention of the appellants that the acquisition of this property at a judicial sale before bankruptcy conferred absolute title upon the purchaser which was not defeasible by a subsequently-appointed officer of the Bankruptcy Court where the bankruptcy petition was not filed until after the sale had occurred. The Receiver is entitled only to the \$500 paid upon the judgment.

If the matter were regarded as a lien transaction, the Trustee's position is fallacious because at the time of the sale the lien expires and the purchaser receives title and the right to possession. If the transaction is regarded as a preference, the Trustee is limited to the recovery of the moneys paid to the judgment creditor which he received, by virtue of the sale and which he has at all stages of the proceedings offered to return to the estate voluntarily.

In Collier's Treatise on Bankruptcy (14th Ed.) Vol. 4, page 147, it is said:

“Where the lien of a judicial proceeding is enforced by the sale of the debtors property subject thereto and the proceeds paid over to the lien creditor prior to the debtor's bankruptcy, the lien becomes merged in the payment and accordingly cannot be affected by

Section 67, notwithstanding the occurrence of bankruptcy within four months of the acquisition of the lien.”

In Remington on Bankruptcy (5th Ed.), Vol. 4, page 391, the same position is taken; that is to say where there has been a sale under execution *before* intervention of a bankruptcy petition, Section 67 no longer applies. The Bankruptcy trustee under these circumstances is limited to the recovery of the proceeds of the sale while in the possession of the sheriff or by recovery from the attaching creditor if the sheriff has already paid the funds over to him.

A case which is on all four's with the case at bar is the case of *In re Bailey* (D. C. Ore., 1906), 144 Fed. 214, 16 A. B. R. 289, where the court said:

“The case at bar, however, presents a different condition from either of the foregoing, by reason of the fact that the purchaser, who is the judgment creditor, has come into the property by virtue of the sheriff's sale, which had been consummated prior to the filing of the petition in bankruptcy, and everything had been done that was required by law to be done for a transfer of the debtor's property to the purchaser, through the process of the court, so that at the time of the filing of the petition in bankruptcy, the debtor was not the owner of the property and, not being the owner, a fortiori, he was not the owner of the proceeds thereof. Keeping in mind now, that it is the lien that is declared void by virtue of section 67f, and not the transfer, one can readily understand that the section does not affect the transaction vitally, or render it void. This has been decided by the case of *Levore v. Seiter, et al.*, 5 A.B.R. 576, 69 N. Y. Supp. 987); it being there held that, where a

judgment has been had and levy made within four months of the filing of the petition in bankruptcy, and the property sold, and the money, the proceeds of the sale, turned in to the hands of the judgment creditor, the lien of the judgment and levy were wholly void, and the creditor could be compelled to return the money in a plenary suit instituted by the trustee for that purpose. But this case was reversed on appeal to the Appellate Division of the Supreme Court of the State (see *Levor v. Seiter, et al.*, supra), where it is held that, the money having been paid over to the judgment creditor before the filing of the petition in bankruptcy, the case does not fall within the provisions of Section 67f of the Bankruptcy Act, and that the lien created by the judgment and levy is not rendered void by the adjudication. It was further held, in that case, that the remedy, if any the trustee had, was by action against the creditor for having received a preference under the provisions of sections 60a and 60b (30 Stat. 564 [U. C. Comp. St. 1901, p. 3445]); . . .”

The same rule was followed in the following cases:

In re Resneck (D. C. Pa., 1909), 167 Fed. 574, 21 A. B. R. 740;

In re Knickerbocker (D. C. N. Y., 1903), 121 Fed. 1004, 10 A. B. R. 381;

Stone-Ordean Wells Co. v. Marl (C. C. A. 8), 227 Fed. 975, 35 A. B. R. 663.

Consider the position of one who attends and bids at a judicial sale under the rule which is espoused by the trustee in bankruptcy. Such a purchaser who purchases before bankruptcy must hold the property purchased for the full four-month period before he may resell, retrans-

fer or in any other way dispose of it because within the ensuing four months a bankruptcy *might* be filed and his title invalidated.

Consider, also, the atmosphere under which judicial sales are to be conducted. Should it be known at judicial sales that the purchaser of any and all property must hold the same four months and that such a sale is not final for four months, the purchase price of large bulky items of personal property will decline tremendously, bidders will be afraid or reluctant to bid and the courts will of necessity have to abandon judicial sales or the levying creditors will have to post storage fees for four ensuing months before sale can be made. (See the remarks of the Supreme Court in *Jones v. Springer, infra.*)

Nor is it shown, in the opinion the undersigned, why if it is conceded that the petitioner Miller and anyone else purchasing at such a sale would be protected, that the judgment creditor himself must stand by and not be able to make a bid because he is chargeable with notice of insolvency. This again can be reduced to an absurdity because it can be shown that everyone purchasing at a judicial sale has knowledge of the insolvency of the debtor and that logically a levying creditor should have the same rights as anyone else to purchase at a judicial sale. In this case the credit upon the judgment was amplified by 250% approximately (see transcript) by the actions of the judgment creditor.

No rule of law nor reason suggests that the judgment of the District Court should be affirmed.

POINT THREE.

Aside From the California Law It Is the Policy and Plain Meaning of the Bankruptcy Act to Protect Purchasers at Judicial Sales.

In addition to the rather obvious reasons for protecting purchasers at judicial sales the Supreme Court itself in the case of *Jones v. Springer* (1912), 226 U. S. 148, 57 L. Ed. 161, 3 S. Ct. 64, 29 A. B. R. 204, has handed down a ruling protecting state court sales at execution or otherwise. The opinion was delivered by Justice Holmes. The case involved the question of the validity of a sale of personal property at execution even though the sale was conducted *after* the filing of the Bankruptcy Petition. It does not appear from the facts in the case whether the purchaser was the levying creditor. However, the reasoning of the Supreme Court is set forth in the body of the opinion in the following words:

“It is argued that if a sale was necessary, the court of bankruptcy could have directed it under General Order 18, 3, and that its power was exclusive. But such a rule would much impair the usefulness of the principle. The trustee, if appointed, may not know the condition of the property, or be prepared to decide. The court having the actual custody of the res does not know of the bankruptcy proceedings. There is a necessity for immediate action and no one is ready to act. If the local court, in its ignorance, directs a sale and the purchaser is chargeable with notice that there may be somewhere a petition filed that will destroy his title, the doubt affects the price that he will give, and if the sale turns out effective, the goods have been sacrificed. The very reason of the rule that permits a good title to be given by an authority that has none

contradicts the limitation supposed. We are of opinion that the power of the territorial court remained. 'For necessity (which is expected out of the law) the sale in that case is good.' 2 Co. Inst. 168. The proceeding is in rem, against all the world, the sale stands, and the claim of the trustee is transferred to the proceeds, which ordinarily must be presumed to represent the fair value of the goods and take their place."

The Bankruptcy Act itself provides for an exception in connection with judicial sales. The 1938 amendment of the Bankruptcy Act contains the following language in Section 67a(3) (11 U. S. C. A. 107):

"The property affected by any lien deemed null and void under the provisions of paragraph (1) and (2) of this subdivision shall be discharged from such lien, and such property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the trustee or debtor, as the case may be, except that the court may on due notice order any such lien to be preserved for the benefit of the estate, and the court may direct such conveyance as may be proper or adequate to evidence the title thereto of the trustee or debtor, as the case may be: *Provided, however, That the title of a bona-fide purchaser of such property shall be valid, but if such title is acquired otherwise than at a judicial sale held to enforce such lien, it shall be valid only to the extent of the present consideration paid for such property.*" (Emphasis supplied.)

Surprisingly enough, there has been little judicial interpretation of the above-quoted section. This may be because its meaning is evidently quite plain. Its obvious purpose is to protect the purchasers at a judicial sale and

to exclude such a purchaser from the operation of Section 67a of the Bankruptcy Act. Purchasers at judicial sales in their entirety are excluded and purchasers who may be said to be of good faith and bona fide purchasers have valid title to the extent of present consideration paid for the property.

Conceding, for the sake of argument only, that the appellants must still show and prove good faith it is appellants position that the emphasized portion of Section 67 of the Bankruptcy Act undoubtedly refers to knowledge of *pending bankruptcy proceedings*, *Jones v. Springer, supra*. That is to say, if an execution sale is held after the filing of a bankruptcy petition but before knowledge thereof is chargeable to the purchaser, he is still acting in good faith. On the other hand a good-faith purchaser, purchasing property from a bankrupt at any other sale than a judicial sale is protected only to the extent of present consideration paid.

In order to understand the intent of Congress, some guidance may be secured from the notes of the National Bankruptcy Conference concerning Section 67a(3) of the Bankruptcy Act and their analysis of it when it was under consideration in 1936-1938. (H. R. 12889—74th Cong. 2d Sess. 1936.) The comment of the conference is found in their analysis of the 1938 Bill in their bound volume containing notes at page 209. The following quotation is taken therefrom:

“The substance of this clause (3) is derived from the Subdivision (f) of the present Section 67. The limits in respect to the present consideration paid is derived from the present Section 67d, but is modified by excepting therefrom a purchaser at a judicial

sale. This exception is deemed to be necessary in the interest of protecting judicial sales. * * *

“The bona fide purchaser protected is obviously the purchaser from the original or any subsequent lien holder or transferor.”

The Trustee in Bankruptcy and his attorney have laid important stress upon the fact that the purchasing creditor (the appellant Abramson) had knowledge of the insolvent condition of the bankrupt concern at the time the execution sale was made. This fact is not denied and was readily admitted at the hearing held on the Receiver's petition.

Such knowledge of the fact of insolvency is and should be immaterial as far as the purchasers at execution sales are concerned.

In the first place anyone purchasing at a judicial sale is certainly chargeable with the knowledge or notice that the concern whose property is being sold is under a severe financial stress and difficulty. In the second place a logical extension of this argument would preclude the judgment creditor from participating in judicial sales at all by virtue of his more intimate knowledge of the affairs of the debtor concern. An absurd but equally permissible extension of this argument would completely nullify the possibility of conducting any judicial sale because any purchaser of goods at a judicial sale who could be said to have knowledge of insolvency of the debtor corporation or individual, as it may be, could have his title to the goods set aside if a bankruptcy petition were filed at any time within four months after the date of the sale.

A case which is on all four's with the case at bar is the case of *In re Weitzel* (D. C. N. Y., 1911), 191 Fed.

463, 27 A. B. R. 370. In this case property of a bankrupt was sold under a Writ of Execution upon a judgment obtained within the four months' period, the property in question being bought by the judgment creditor, the proceeds being applied toward payment of the judgment. The court ruled that the Receiver in bankruptcy had no right to retain such property against the judgment creditor under Section 67 of the Bankruptcy Act. The court said in this case as follows:

“In the present instance, therefore, the creditor who purchased the goods was in the position of a bona fide holder for value of the goods themselves. To the extent, he was entitled to hold the proceeds as satisfaction of his judgment, and the estate in bankruptcy would either have to deal with him through Sec. 60 of the Bankruptcy Act, relating to preferential transfers, or attack the transaction for fraud and collusion, if they are entitled to such relief. Under these circumstances, the receiver has no right to hold possession of the property against the judgment creditor, and the expense of his occupation must be paid by the petitioning creditors who gave the bond therefor.”

The foregoing case has never been overruled and has been followed in the District of New York since it was handed down.

Another case of extreme importance to the court in the consideration of this matter is the case of *In re Moore* (D. C. Ga., 1930), 42 F. 2d 475, 16 A. B. R. (N. S.) 174. This case is important because the Receiver throughout these proceedings has made an issue of the point that at the sale the petitioner Abramson had knowledge of the fact that the debtor corporation was insolvent and

in poor financial circumstances. This, again, is rebutted first, by the obvious argument to the effect that any concern whose property is being sold at an execution sale is clearly in dire financial stress and any purchaser who purchases at such a sale must know that. It is also rebutted by the ruling in the foregoing case which sets forth that judicial sales are protected irrespective of knowledge of insolvency so long as there is no notice or knowledge that petition in bankruptcy has been filed. In this case there was notice of an adjudication in bankruptcy which was brought to the proper attention of the state court officers but the court was careful to point out that notice to a purchaser refers to "notice of a pending or impending bankruptcy" and not to insolvency of the debtor corporation.

In the case of *Coppard v. Gardner* (Tex. Civ. App., 1917), 199 S. W. 650, 40 A. B. R. 777, the court again had the occasion to consider a judicial sale and the rights of a purchaser who had acquired the property *after* the filing of a bankruptcy. The court held in construing the old prior section of the bankruptcy law which included the phrase, "without notice or reasonable cause of inquiry" (which by the way has been deleted from the present statute) as follows:

"Notice of or inquiry about what? It must necessarily be about the matter treated of in the section which is the filing of the petition and would apply to purchases after the filing rather than before, because a purchaser could not have knowledge of a thing that did not exist when he purchased. He could not be held to be other than an innocent purchaser before the filing, unless he was perhaps guilty of fraud or collusion with the bankrupt. The only per-

sons charged by the act with notice of the filing of the petition in bankruptcy are the creditors of the bankrupt, and this is inferred from the fact that the only instances in which creditors shall receive notice are carefully selected and specified in the bankruptcy statute. No valid notice was given in the cases in which the sheriff acted in selling the property claimed by the trustee."

A similar result was reached in the matter of *Kentucky Book Manufacturing Company* (D. C. Ky., 1939), 42 A. B. R. (N. S.) 869, in which case a landlord who purchased the bankrupt's property at a distraint sale was held to be a bona fide purchaser so long as the sale was completed before the filing of any bankruptcy petition. In this case the purchaser was the judgment creditor, which makes it identical to the case at bar. The court said:

"It would seem, therefore, that the lien acquired by the landlord and perfected by the levy of the distress warrant was not one which was dissolved by the institution of bankruptcy proceedings within four months thereafter. The lien creditor had a right to enforce his lien by a judicial sale, and the title acquired by the purchaser at such a sale would not be favorable title by reason of any alleged preference a Title acquired by a bona fide purchaser at a judicial sale even where the lien being enforced is a favorable one, has been held to be good. In *Re Weitzel*, D. C. N. Y. 191 F. 463, In *Re Carr*, D. C. Pa. 39 F. 2d 912. Section 67 of the Bankruptcy Act specifically protects such a purchaser. If the lien being enforced by a judicial sale is not a favorable one, the purchaser stands in even a better position and his title can only be defeated by successfully attacking the validity of the sale."